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**SENSITIVE**

**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

AUDIT REFERRAL: 06-03

DATE REFERRED: August 25, 2006

DATE ACTIVATED: September 29, 2006

STATUTE OF LIMITATIONS: January 9, 2008

**SOURCE:** AUDIT REFERRAL

**RESPONDENTS:** Meeks for Congress and Joan E. Flowers, in her official  
capacity as treasurer  
Gregory W. Meeks  
Advent Capital Management, LLC

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 434(b)(1)  
2 U.S.C. § 434(b)(2)  
2 U.S.C. § 434(b)(3)  
2 U.S.C. § 434(b)(4)  
2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 441b(a)  
2 U.S.C. § 432(c)(5)  
2 U.S.C. § 432(d)  
2 U.S.C. § 439a(b)  
11 C.F.R. § 102.9  
11 C.F.R. § 103.3(b)  
11 C.F.R. § 110.1(a)  
11 C.F.R. § 110.1(b)  
11 C.F.R. § 110.1(g)  
11 C.F.R. § 110.1(k)(3)(ii)(B)  
11 C.F.R. § 113.1(g)

**INTERNAL REPORTS CHECKED:** Audit Documents  
Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

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**I. INTRODUCTION**

This matter was generated by a Commission audit pursuant to 2 U.S.C. § 438(b) of the Meeks for Congress Committee ("MFC") covering the period January 1, 2003 through December 31, 2004. The Commission approved the Report of the Audit Division on MFC on August 17, 2006, and on August 25, 2006, a number of findings were referred to the Office of the General Counsel for enforcement. Attachment 1. Based on the information set forth in the Final Audit Report ("FAR"), we recommend that the Commission make reason to believe findings as follows:

- MFC misstated its cash on hand, receipts and disbursements in the years 2003 and 2004 in violation of 2 U.S.C. § 434(b) (Finding 1; Attachment 1 at 5 - 7).
- MFC accepted contributions in excess of the limitations of the Federal Election Campaign Act of 1971, as amended, ("the Act") in violation of 2 U.S.C. § 441a(f) (Finding 2; Attachment 1 at 7 - 8).
- MFC accepted apparent prohibited contributions in violation of 2 U.S.C. § 441b(a) (Finding 3; Attachment 1 at 9 - 10).
- MFC failed to keep proper records of its operating expenditures and its contributions made to other political committees in violation of 2 U.S.C. §§ 432(c)(5) and 432(d) (Finding 5; Attachment 1 at 12 - 13).
- MFC used campaign funds to pay for what appeared to be personal expenses of the Candidate in violation of 2 U.S.C. § 439a(b) (Finding 8; Attachment 1 at 15 - 18).
- Gregory W. Meeks used campaign funds to pay for what appear to be personal expenses in violation of 2 U.S.C. § 439a(b) (Finding 8; Attachment 1 at 15 - 18).
- Advent Capital Management, LLC made a prohibited corporate contribution to MFC in violation of 2 U.S.C. § 441b(a) (Finding 3; Attachment 1 at 9 - 10).

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**III. RECOMMENDATIONS**

1. Open a MUR in AR 06-03;
2. Find reason to believe that Meeks for Congress and Joan E. Flowers, in her official capacity as treasurer violated 2 U.S.C. § 434(b) by misstating its cash on hand, receipts and disbursements in years 2003 and 2004;
3. Find reason to believe that Meeks for Congress and Joan E. Flowers, in her official capacity as treasurer violated 2 U.S.C. § 441a(f) by accepting contributions in excess of the limitations of the Act;
4. Find reason to believe that Meeks for Congress and Joan E. Flowers, in her official capacity as treasurer violated 2 U.S.C. § 441b(a) by accepting apparent prohibited contributions;
5. Find reason to believe that Meeks for Congress and Joan E. Flowers, in her official capacity as treasurer violated 2 U.S.C. §§ 432(c)(5) and 432(d) by failing to keep proper records of its operating expenditures and its contributions made to other political committees;
6. Find reason to believe that Meeks for Congress and Joan E. Flowers, in her official capacity as treasurer violated 2 U.S.C. § 439a(b) by using campaign funds for personal expenses of the Candidate;
7. Find reason to believe that Gregory W. Meeks violated 2 U.S.C. § 439a(b) by using campaign funds for personal expenses;
8. Find reason to believe that Advent Capital Management, LLC violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions to Meeks for Congress and Joan E. Flowers, in her official capacity as treasurer;
- 9.
- 10.
11. Approve as Factual and Legal Analyses the Report of the Audit Division on Meeks for Congress, dated August 11, 2006; and

12. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

Rhonda J. Vosdinger  
Associate General Counsel

Date

12/7/06

BY:

Sidney Rocke  
Sidney Rocke  
Assistant General Counsel

Christine C. Gallagher  
Christine C. Gallagher  
Attorney

Attachments:

1. Report of the Audit Division on Meeks for Congress



## Report of the Audit Division on Meeks for Congress

January 1, 2003 – December 31, 2004

### Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

### Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

### About the Campaign (p. 2)

Meeks for Congress (MFC) is the principle campaign committee for Gregory Meeks, Democratic candidate for the U.S. House of Representatives from the state of New York, 6<sup>th</sup> District. MFC maintains its headquarters in Springfield Garden, New York. For more information see the Campaign Organization Chart, p. 2.

### Financial Activity (p. 2)

- **Receipts**
  - Contributions from Individuals \$ 332,565
  - Contributions from Political Committees 373,470
  - Offsets to Expenditures 474
  - **Total Receipts** \$ 706,509
- **Disbursements**
  - Operating Expenditures \$ 569,457
  - Other Disbursements 35,455
  - **Total Disbursements** \$ 604,912

### Findings and Recommendations (p. 3)

- Misstatement of Financial Activity<sup>2</sup> (Finding 1)
- Receipt of Contributions That Exceed Limits (Finding 2)
- Receipt of Apparent Prohibited Contributions (Finding 3)
- Disclosure of Occupation/Name of Employer<sup>2</sup> (Finding 4)
- Recordkeeping for Disbursements (Finding 5)
- Disclosure of Operating Expenditures<sup>2</sup> (Finding 6)
- Failure to Properly Disclose Outstanding Debts (Finding 7)
- Personal Use of Campaign Funds (Finding 8)
- Inadequate Disclosure - Form 3Z-1 (Finding 9)

<sup>1</sup> 2 U.S.C. §438(b).

<sup>2</sup> The audit of MFC for the 1999-2000 election cycle contained a similar finding.



# **Report of the Audit Division on Meeks for Congress**

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January 1, 2003 – December 31, 2004



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## **Part I Background**

### **Authority for Audit**

This report is based on an audit of Meeks for Congress (MFC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(h).

### **Scope of Audit**

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

### **Inventory of Records**

At the beginning of audit fieldwork, the auditors conducted an inventory of MFC records to determine whether they were materially complete and in an auditable state. The Audit staff determined that records were incomplete for 23% of the dollar amount of receipts.

At the time, disbursement testing also revealed a significant number of disbursements for which documentation such as a canceled check or invoice was not available. As a result, audit fieldwork was suspended and MFC was allowed 30 days to obtain the records.

Fieldwork resumed after the expiration of the 30-day period and further testing results indicated that recordkeeping for receipts was substantially complete; however, a significant number of disbursements were still not documented. See Finding 5.

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## Part II

### Overview of Campaign

#### Campaign Organization

Important Dates	Weeks for Congress
• Date of Registration	August 20, 1997
• Audit Coverage	January 1, 2003 – December 31, 2004
<b>Headquarters</b>	Springfield Garden, New York
<b>Bank Information</b>	
• Bank Depositories	One
• Bank Accounts	One Checking Account
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Ms. Joan E. Flowers
• Treasurer During Period Covered by Audit	Ms. Joan E. Flowers
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting, Recordkeeping Tasks and Other Day-to-Day Operations	Volunteer

#### Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2003	\$ 113,357
<b>Receipts</b>	
o Contributions from Individuals	\$332,565
o Contributions from Other Political Committees	373,470
o Offsets to Operating Expenditures	474
<b>Total Receipts</b>	<b>\$ 706,509</b>
<b>Disbursements</b>	
o Operating Expenditures	\$596,457
o Other Disbursements	35,455
<b>Total Disbursements</b>	<b>\$ 604,912</b>
Cash on hand @ December 31, 2004	\$ 214,954

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## Part III

### Summaries

### Findings and Recommendations

#### **Finding 1. Misstatement of Financial Activity**

A comparison of MFC's reported activity to bank records revealed a misstatement of cash on hand, receipts and disbursements in years 2003 and 2004. In response to the interim audit report recommendation, MFC filed amended reports but failed to correct the misstatements in 2004. (For more detail, see p. 5)

#### **Finding 2. Receipt of Contributions that Exceed Limits**

MFC received contributions from individuals, totaling \$22,900 in excess of their primary election limit and disclosed them as general election contributions. MFC did not inform the contributors of the redesignations and offer them refunds. The Audit staff recommended that MFC submit documentation to show that the contributions are not excessive or refund the contributions. In response, MFC provided a copy of a recent affidavit from the fundraiser that states contributors were verbally informed of how their contributions were to be designated. Since MFC did not refund or inform the contributor of their redesignation in writing and within 60 days of receipt of the contribution, the Audit staff maintains these contributions are excessive. (For more detail, see p. 7)

#### **Finding 3. Receipt of Apparent Prohibited Contributions**

MFC received contributions totaling \$7,070 from corporations and limited liability companies (LLC). Contributions from corporations and from LLCs that elect to be treated as corporations under IRS rules are prohibited. The Audit staff recommended that MFC provide documentation demonstrating that the contributions are not prohibited or refund the contributions to the contributors. In response, MFC provided copies of letters recently sent to some of these contributors to confirm the legality of their contribution. To date, none of these confirmations have been returned nor have the contributions been refunded; therefore, the Audit staff maintains these contributions are prohibited. (For more detail, see p. 9)

#### **Finding 4. Disclosure of Occupation/Name of Employer**

MFC did not adequately disclose occupation and/or name of employer for 24% of contributions from individuals itemized on its disclosure reports. Furthermore, there was no evidence that "best efforts" to obtain, maintain, and submit the information for these individuals had been exercised. In response to the interim audit report recommendation, MFC was able to demonstrate that "best efforts" had been exercised for the missing information. (For more detail, see p. 11)

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### **Finding 5. Recordkeeping for Disbursements**

A sample review of operating expenditures indicated that 28% of expenditures were not properly documented. Further, a review of contributions made to other political committees indicated that 4 transactions totaling \$3,850 were also not properly documented. The Audit staff recommended that MFC obtain and provide the missing records for disbursements. In response, MFC indicated that efforts were being taken to contact the bank and payees to obtain missing records. To date, none of the missing documentation has been provided to the Audit staff. (For more detail, see p. 12)

### **Finding 6. Disclosure of Operating Expenditures**

A sample review of operating expenditures itemized on Schedules B (Itemized Disbursements) revealed that 14% of the transactions lacked or inadequately disclosed required information. In addition, a 100% review of payments to a credit card company revealed that charges to vendors aggregating in excess of \$200 were not properly disclosed as memo entries on Schedules B of the disclosure reports. In response to the interim audit report recommendation, MFC filed amended reports to correctly disclose the information. (For more detail, see p. 13)

### **Finding 7. Failure to Properly Disclose Outstanding Debts**

MFC failed to report debts on Schedules D (Debts and Obligations) owed to 19 different vendors in the amount of \$28,791. In response to the interim audit report recommendation, MFC filed amended reports to disclose these debts. (For more detail, see p. 14)

### **Finding 8. Personal Use of Campaign Funds**

MFC used \$20,650 of campaign funds to pay for what appeared to be personal expenses of the Candidate, including payments to a personal trainer and for vehicle leases, repairs and maintenance. The Audit staff recommended that MFC provide evidence that the payments were for campaign or officeholder expenses and not for the Candidate's personal use. Absent such evidence, it was recommended that MFC seek reimbursement from the Candidate for any personal expenses. In response, MFC acknowledged expenses totaling \$7,146 were mistakenly paid by MFC and would be reimbursed by the Candidate. In addition, MFC demonstrated that \$3,692 of vehicle expenses were related to a vehicle used predominately for campaign or officeholder purposes. Therefore, the Audit staff maintains that \$16,958 (\$20,650 - \$3,692) of campaign funds were used to pay for personal expenses. (For more detail, see p. 15)

### **Finding 9. Inadequate Disclosure - Form 3Z-1**

MFC did not file a Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with either its 2003 July Quarterly Report or 2003 Year End Report. In response to the interim audit report recommendation, MFC indicated that the non-filing may have been due to their assumption that filing software would generate the form automatically. MFC also filed amended reports to include Form 3Z-1. (For more detail, see p. 18)

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## Part IV

# Findings and Recommendations

### Finding 1. Misstatement of Financial Activity

#### Summary

A comparison of MFC's reported activity to bank records revealed a misstatement of cash on hand, receipts and disbursements in years 2003 and 2004. In response to the interim audit report recommendation, MFC filed amended reports but failed to correct the misstatements in 2004.

#### Legal Standard

**Contents of Reports.** Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the election cycle;
- The total amount of disbursements for the reporting period and for the election cycle; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), and (4).

#### Facts and Analysis

The Audit staff reconciled MFC's reported financial activity to its bank records for 2003 and 2004. The following charts outline the discrepancies.

2003 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2003	\$127,596	\$113,357	\$14,239 Overstated
Receipts	\$297,012	\$332,507	\$35,495 Understated
Disbursements	\$245,386	\$266,691	\$21,305 Understated
Closing Cash Balance @ December 31, 2003	\$179,222	\$179,174	\$48 Overstated

#### Beginning Cash Balance – 2003

The overstatement of beginning cash on hand in the amount of \$14,239 was the result of prior period transactions.

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The understatement of receipts was the result of the following:

• Contributions from Individuals Not Reported	+	\$14,580
• Contributions from Political Committees Not Reported	+	20,441
• Offset to Operating Expenditure Not Reported	+	474
• <b>Understatement of Receipts</b>		<b>\$35,495</b>

The net understatement of disbursements was the result of the following:

• Operating Expenditures Not Reported	+	\$22,960
• Operating Expenditures Reported Twice	-	405
• Voided Operating Expenditures Reported	-	1,250
• <b>Net Understatement of Disbursements</b>		<b>\$21,305</b>

<b>2004 Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash Balance @ January 1, 2004	\$179,222	\$179,174	\$48 Overstated
Receipts	\$263,060	\$374,002	\$110,942 Understated
Disbursements	\$291,706	\$338,221	\$46,515 Understated
Closing Cash Balance @ December 31, 2004	\$150,576	\$214,955	\$64,379 Understated

The net understatement of receipts was the result of the following:

• Contributions from Individuals Not Reported (Net)	+	\$46,445
• Contributions from Political Committees Not Reported (Net)	+	69,127
• Unexplained Differences	-	4,630
• <b>Net Understatement of Receipts</b>		<b>\$110,942</b>

The net understatement of disbursements was the result of the following:

• Operating Expenditures Not Reported	+	\$52,963
• Other Disbursements Reported in Error	-	1,000
• Operating Expenditures Reported Twice	-	5,000
• Math Discrepancies	-	448
• <b>Net Understatement of Disbursements</b>		<b>\$46,515</b>

**Closing Cash on Hand:**

MFC misstated the cash balances throughout 2003 and 2004 because of the errors described above. On December 31, 2004, the cash balance was understated by \$64,379.

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The Audit staff presented this matter to MFC's treasurer during the exit conference along with schedules detailing the discrepancies. The treasurer stated that MFC would amend its reports to correct the misstatement.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended MFC file amended reports to correct the misstatements. In response, MFC amended its reports but failed to correct the misstatements in 2004. The Audit staff provided MFC with schedules to assist in correctly amending its reports. MFC indicated that more amendments were forthcoming to bring their reports into compliance. To date, no additional amendments for these reporting periods have been received.

## **Finding 2. Receipt of Contributions That Exceed Limits**

### **Summary**

MFC received contributions from individuals, totaling \$22,900 in excess of their primary election limit and disclosed them as general election contributions. MFC did not inform the contributors of the redesignations and offer them refunds. The Audit staff recommended that MFC submit documentation to show that the contributions were not excessive or refund the contributions. In response, MFC provided a copy of a recent affidavit from the fundraiser that states contributors were verbally informed of how their contributions were to be designated. Since MFC did not refund or inform the contributor of their redesignation in writing and within 60 days of receipt of the contribution, the Audit staff maintains these contributions are excessive.

### **Legal Standard**

**A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,000 per election from any one person. 2 U.S.C. §441a(a)(1)(A); 11 CFR §§110.1(a) and (b).

**B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
  - o Keep enough money in the account to cover all potential refunds;
  - o Keep a written record explaining why the contribution may be illegal;
  - o Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
  - o Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation); and
  - o If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

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**C. Presumptive Redesignation of Excessive Contributions:** When an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

The committee is required to notify the contributors in writing of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent as required. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

#### **Facts and Analysis**

MFC accepted contributions from 16 individuals that exceeded their primary election limits by \$22,990. The contribution checks were received before the primary election and were not designated by the contributors; however, MFC redesignated the excess portions to the general election. Evidence that MFC sought and received signed redesignation letters was not provided nor was evidence provided that the contributors were notified that their contributions were presumptively redesignated and offered a refund. It should be noted that MFC maintained a sufficient balance in its bank account to refund the excessive contributions.

The Audit staff presented this matter to MFC's treasurer during the exit conference along with a schedule of possible excessive contributions. The treasurer stated that she would search her files and provide the Audit staff with any redesignation letters that were available.

#### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that MFC provide evidence that the contributions were not excessive or were timely redesignated or refunded. In response, MFC provided a copy of an affidavit from the fundraiser for the contributions in which it stated that contributors were informed verbally of how their contributions would be designated. In accordance with 11 CFR §110.1(b)(5)(ii)(B), MFC was required to inform contributors of the redesignation in writing within 60 days of receipt of the contribution and retain a record of such efforts. Therefore, the Audit staff maintains MFC accepted contributions from these individuals that exceeded the limits.

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### **Finding 3. Receipt of Apparent Prohibited Contributions**

#### **Summary**

MFC received contributions totaling \$7,070 from corporations and limited liability companies (LLC). Contributions from corporations and from LLCs that elect to be treated as corporations under IRS rules are prohibited. The Audit staff recommended that MFC provide documentation demonstrating that the contributions were not prohibited or refund the contributions to the contributors. In response, MFC provided copies of letters recently sent to some of these contributors to confirm the legality of their contribution. To date, none of these confirmations have been returned nor have the contributions been refunded; therefore, the Audit staff maintains these contributions are prohibited.

#### **Legal Standard**

**A. Receipt of Prohibited Contributions – General Prohibition.** Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans) from the treasury funds of corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative. 2 U.S.C. §441b(a).

**B. Definition of Limited Liability Company.** A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the state in which it was established. 11 CFR §110.1(g)(1).

**C. Application of Limits and Prohibitions to LLC Contributions.** A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below.

- **LLC as Partnership.** The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under the Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. A contribution by a partnership is attributed to both the partnerships and to the partners. 11 CFR §110.1(e)(1) and (g)(2).
- **LLC as Corporation.** The contribution is considered a corporate contribution, and is barred under the Act, if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are publicly traded. 11 CFR §110.1(g)(3).
- **LLC with Single Member.** The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).
- **Limited Liability Company's Responsibility to Notify Recipient Committee.** At the time it makes a contribution, an LLC must notify the recipient committee:
  - That it is eligible to make the contribution; and
  - In the case of an LLC that considers itself a partnership (for tax purposes), how the contribution should be attributed among its members. 11 CFR §110.1(g)(5).

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**D. Questionable Contributions.** If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below;

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
  - Return the contribution to the contributor without depositing it; or
  - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make refunds or establish a separate account in a campaign depository for possible illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
  - Confirm the legality of the contribution; or
  - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

#### **Facts and Analysis**

MFC accepted 13 contributions totaling \$7,070 from apparent prohibited sources. Eight contributions, totaling \$5,250, were received from LLCs, and five contributions, totaling \$1,820, were received from corporations. The corporate status of the entities at the time the contribution was made was verified with the Secretary of State. Documentation regarding the permissibility of the contributions from the LLCs was not provided. It should be noted that MFC maintained a sufficient balance in its bank account to refund the prohibited contributions.

The Audit staff presented this matter to MFC's treasurer during the exit conference along with a schedule of the apparent prohibited contributions. The treasurer stated that she would provide letters demonstrating that the LLCs were treated as partnerships.

#### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended MFC provide evidence that these contributions were not prohibited or refund the contributions. In response, MFC provided copies of letters, dated March 15, 2006, to the contributors to confirm the legality of their contribution. To date, none of these confirmations have been returned nor have the contributions been refunded; therefore, the Audit staff maintains these contributions totaling \$7,070 are prohibited.

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## **Finding 4. Disclosure of Occupation/Name of Employer**

### **Summary**

MFC did not adequately disclose occupation and/or name of employer for 24% of contributions from individuals itemized on its disclosure reports. Furthermore, there was no evidence that "best efforts" to obtain, maintain, and submit the information for these individuals had been exercised. In response to the interim audit report recommendation, MFC was able to demonstrate that "best efforts" had been exercised for the missing information.

### **Legal Standard**

**A. Recordkeeping Requirements for Receipts.** Political committees must keep records of:

- All contributions received by or on behalf of the committee;
- The name and address of any person who makes a contribution in excess of \$50, together with the date and amount of the contribution; and
- The occupation and name of employer of any individual whose contributions aggregate more than \$200 during a calendar year, together with the date and amount of any such contributions. 2 U.S.C. §432(c).

**B. Preserving Documents.** Committees must preserve these records for 3 years after a report is filed. 2 U.S.C. §432(d).

**C. Best Efforts Ensures Compliance.** When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

**D. Definition of Best Efforts.** The treasurer and the committee will be considered to have used "best efforts" with respect to contributions if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
  - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
  - The statement that such reporting is required by Federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

### **Facts and Analysis**

Available solicitations indicate MFC requested disclosure information from contributors initially and had made follow up requests to some contributors. However, MFC failed to

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disclose occupation and/or employer or provide evidence that "best efforts" to obtain and submit the information had been exercised for 24% of itemized contributions for individuals.

The Audit staff presented this matter to the treasurer during the exit conference. She stated that MFC would provide letters showing its attempts to get the name of employer and occupation information from each individual.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended MFC provide evidence that it exercised "best efforts" to obtain and disclose the missing contributor information or contact the contributors and disclose any information received. In response, MFC provided additional copies of letters dated within 30 days of the contributions that were apparently sent to contributors to obtain the missing information. As a result, the Audit staff determined that MFC exercised "best efforts" for the missing information.

## **Finding 5. Recordkeeping for Disbursements**

### **Summary**

A sample review of operating expenditures indicated that 28% of expenditures were not properly documented. Further, a review of contributions made to other political committees indicated that 4 transactions totaling \$3,850 were also not properly documented. The Audit staff recommended that MFC obtain and provide the missing records for disbursements. In response, MFC indicated that efforts were being taken to contact the bank and payees to obtain missing records. To date, none of the missing documentation has been provided to the Audit staff.

### **Legal Standard**

**A. Required Records for Disbursements.** For each disbursement, the treasurer of a political committee must keep records on the:

- Amount;
- Date;
- Name and address of the payee;
- Purpose (a brief description of why the disbursement was made); and
- If the disbursement was made on behalf of a candidate, the candidate's name and the office sought by the candidate.
- If the disbursement was in excess of \$200, the records must include a receipt or invoice from the payee, or a cancelled check or share draft to the payee. If the disbursement was by credit card, the record must include the monthly statement or customer receipt and the cancelled check used to pay the credit card bill. 2 U.S.C. §432(c)(5) and 11 CFR §102.9(b).

**B. Preserving Records and Copies of Reports.** The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 2 U.S.C. §432(d).

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### **Facts and Analysis**

A sample review of operating expenditures indicated a significant number of expenditures were not adequately documented. Twenty-eight percent of the sample items lacked documentation such as canceled checks, invoices or receipts from the vendor.

In addition, a review of contributions made to other political committees indicated that MFC failed to maintain a canceled check or any other documentation for 4 of these transactions totaling \$3,850.

As previously noted, MFC was made aware of the lack of documentation for disbursements at the beginning of audit fieldwork and was allowed time to obtain records. (See Inventory of Records above at page 1.)

The Audit staff presented this matter to the MFC treasurer again at the exit conference. The treasurer stated that she would either contact the bank in an attempt to obtain copies of the canceled checks, or contact the payees to obtain the necessary documentation.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that MFC obtain and submit the missing documentation for the disbursements. In response, MFC indicated that efforts were being made to contact the bank and payees to obtain missing records. To date, none of the missing documentation has been provided to the Audit staff.

## **Finding 6. Disclosure of Operating Expenditures**

### **Summary**

A sample review of operating expenditures itemized on Schedules B (Itemized Disbursements) revealed that 14% of the transactions lacked or inadequately disclosed required information. In addition, a 100% review of payments to a credit card company revealed that charges to vendors aggregating in excess of \$200 were not properly disclosed as memo entries on Schedules B of the disclosure reports. In response to the interim audit report recommendation, MFC filed amended reports to correctly disclose the information.

### **Legal Standard**

**A. Reporting Operating Expenditures.** When operating expenditures to the same person exceed \$200 in an election cycle, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made—see below). 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(4)(i)

### **B. Examples of Purpose.**

- Adequate Descriptions. Examples of adequate descriptions of “purpose” include the following: dinner expenses, media, salary, polling, travel, party fees, phone

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banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3 (b)(4)(i)(A)

- **Inadequate Descriptions.** The following descriptions do not meet the requirement for reporting "purpose": advance, election day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3 (b)(4)(i)(A)

### **C. Credit Card Transactions**

In the case of operating expenditures charged on a credit card, a committee must itemize a payment to a credit card company if the payment exceeds the \$200 aggregate threshold for itemization explained above. The committee must also itemize, as a memo entry, any specific transaction charged on a credit card if the payment to the actual vendor exceeds the \$200 threshold. The memo entry must also include the name and address of the vendor, the purpose of the disbursement and the amount of the disbursement.

11 CFR §§102.9(b)(2) and 104.9.

### **Facts and Analysis**

A sample review of operating expenditures resulted in a 14% error rate for disclosure information. Most of these errors were due to not reporting a purpose or the complete vendor address for the disbursement.

In addition, MFC made payments for credit card charges to American Express totaling \$99,246. Of this amount, credit card charges totaling \$86,066 required disclosure as memo entries to the original vendor on Schedules B. However, MFC did not disclose memo entries totaling \$82,021.

The Audit staff presented this matter to the treasurer. The treasurer did not explain the reason for the omissions but stated that MFC would amend its reports to properly disclose operating expenditures and the memo entries for credit card charges on Schedules B.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that MFC amend its reports to correctly disclose operating expenditures and memo entries associated with credit card payments. In response, MFC filed amended reports to correctly disclose the information.

## **Finding 7. Failure to Properly Disclose Outstanding Debts**

### **Summary**

MFC failed to report debts on Schedules D (Debts and Obligations) owed to 19 different vendors in the amount of \$28,791. In response to the interim audit report recommendation, MFC filed amended reports to disclose these debts.

### **Legal Standard**

**A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

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**B. Itemizing Debts and Obligations.**

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

**Facts and Analysis**

The Audit staff tested all MFC disbursements that had associated records to substantiate the incurrence date for the goods and services provided. From this review, the Audit staff identified debts totaling \$28,791 to 19 vendors that were not reported on Schedules D. Of this amount, debts totaling \$1,147 remained outstanding at the end of the audit period. In determining the total for debts not reported, each debt was counted only once even if it was outstanding for several reporting period.

The Audit staff presented this matter to the treasurer during the exit conference along with a schedule of debts and obligations requiring disclosure. The treasurer stated that MFC would amend its reports to disclose the correct amount of debt for each report.

**Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that MFC amend its reports to disclose these debts. In response, MFC filed amended reports to correctly disclose these debts.

<b>Finding 8. Personal Use of Campaign Funds</b>
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**Summary**

MFC used \$20,650 of campaign funds to pay for what appeared to be personal expenses of the Candidate, including payments to a personal trainer and for vehicle leases, repairs and maintenance. The Audit staff recommended that MFC provide evidence that the payments were for campaign or officeholder expenses and not for the Candidate's personal use. Absent such evidence, it was recommended that MFC seek reimbursement from the Candidate for any personal expenses. In response, MFC acknowledged expenses totaling \$7,146 were mistakenly paid by MFC and would be reimbursed by the Candidate. In addition, MFC demonstrated that \$3,692 of vehicle expenses were related to a vehicle used predominately for campaign or officeholder purposes. Therefore, the Audit staff maintains that \$16,958 (\$20,650 - \$3,692) of campaign funds were used to pay for personal expenses.

**Legal Standard**

**A. Use of Campaign Funds.** Using campaign funds for personal use is prohibited. 2 U.S.C. §439a(b)(1).

**B. Personal Use Defined.** Personal use is defined as any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation, or expense

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of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. Personal use includes but is not limited to the use of funds in a campaign account for household food items or supplies and clothing beyond a *de minimis* value.

The Commission will determine on a case-by-case basis whether certain uses of funds in a campaign account are personal use. Examples of such uses includes travel expenses associated with both personal and campaign or officeholder activities and expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign or officeholder activities. 11 CFR §113.1(g)(1)(i) and (g)(1)(ii).

**C. AO 2001 – 3.** MFC requested an advisory opinion dealing with the use of campaign funds to purchase a vehicle. The request proposed that:

- MFC purchase a vehicle which would be used 95% for the campaign and 5% for personal use.
- The vehicle would be titled to MFC and registered in the state of Maryland.
- Campaign funds would be used to pay insurance.
- The Candidate would reimburse MFC for personal use at \$.325 per mile.

The Commission ruled that this proposal was permissible under the Act and Regulations but their opinion was limited to the circumstances presented where the personal use of the vehicle was *de minimis*. The Commission stated that to document the campaign and non-campaign use of the vehicle, a mileage log that was updated with each use of the car would satisfy recordkeeping requirements.

## **Facts and Analysis**

### **A. Personal Use - Personal Trainer**

MFC used campaign funds totaling \$6,230 to pay for a personal trainer for the Candidate. The trainer's fee was \$45 per one hour session. The treasurer stated that the personal trainer was necessary to alleviate stress brought on by the Candidate's duties.

### **B. Personal Use - Car**

In October 2001, the Candidate leased a vehicle. According to the lease agreement, the monthly payments were \$521. From January 2003 to October 2004, MFC made monthly lease payments of \$285 and one final payment of \$891 in December 2004, for a total of \$7,161. The treasurer stated that MFC and the Candidate each paid 50% of the monthly payment.<sup>3</sup> When the lease expired, the Candidate returned the vehicle and leased another vehicle in December 2004 for which MFC made a payment of \$283 representing 50% of the payment for the first month<sup>4</sup>. In summary, MFC made vehicle lease payments totaling \$7,444 (\$7,161 + \$283) during the period covered by the audit.

In addition to vehicle lease payments, MFC paid for vehicle expenses totaling \$6,060 with an MFC credit card. According to MFC credit card billing statements, these

<sup>3</sup> MFC payments of \$283 actually represents approximately 55% of the monthly vehicle lease.

<sup>4</sup> According to reported activity through the 2006 July Quarterly Report, MFC has continued making lease payments on this vehicle totaling \$5,054.

expenses included vehicle repair service, satellite radio fees, and fees for custom license plates.

In following the advisory opinion (AO 2001-3) requested by MFC and pursuant to 11 CFR §113.1(g)(ii)(D), the Audit staff maintains MFC was required to keep a mileage log or some other record to document the use of vehicles for campaign and non-campaign activities. Absent such documentation, the Audit staff considers all expenses associated with these vehicles that were used for personal activities beyond a *de minimis* amount to be personal use, including lease payments, and expenses for repairs and maintenance.

#### **C. Personal Use – Miscellaneous Expenses**

The Audit staff also identified personal expenses totaling \$916 that were purchased with an MFC credit card. According to the credit card statements, these charges were each under \$200 and made by the Candidate or his spouse. The charges included an airline ticket, lodging, clothing, and cell phone accessories.

The Audit staff presented these matters to the treasurer during the exit conference along with a schedule of those transactions noted above. The treasurer stated that MFC would provide further documentation on this matter.

#### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended MFC provide evidence that the \$20,650 (\$6,230 + \$7,444 + \$6,060 + \$916) in disbursements described above were for campaign or officeholder expenses and not for the Candidate's personal use. Absent such evidence, it was recommended that the Candidate reimburse MFC for any personal expenses.

In response, MFC concurred with the Audit staff that the payments to the personal trainer of \$6,230 and the miscellaneous credit card expenses of \$916 were for the Candidate's personal use.

Regarding the use of vehicles, the treasurer clarified that the Candidate had use of one vehicle in Washington and another vehicle in his congressional district during the period covered by the audit. According to the treasurer, the vehicle located in Washington was used less than 3,000 miles per year. The vehicle was used 95% of the time for campaign purposes and 5% of the time for personal activities. In addition, the treasurer explained that the vehicle was titled in New York to maintain the identity of the Candidate's home state and in the Candidate's name because the insurance company would not insure the vehicle in the name of the committee. The treasurer stated that personal use of this vehicle was *de minimis* and that a mileage log was not maintained due to the infrequent use of the vehicle.

In addition, the treasurer indicated that some maintenance and repair expenses for this vehicle were paid with the MFC credit card. The Audit staff determined that \$3,692 of the \$6,060 in vehicle expenses charged on the MFC credit card were with vendors in Washington and therefore could be reasonably associated with this vehicle. The remaining \$2,368 in vehicle expenses were associated with the vehicle maintained in the Candidate's congressional district and considered personal expenses of the Candidate.

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Regarding the vehicles located in the congressional district, the treasurer confirmed that two vehicles were leased at different times during the period covered by the audit. The treasurer stated that lease payments and insurance for these vehicles were divided equally between the campaign and the Candidate's personal funds. According to the treasurer, this payment arrangement demonstrated the actual usage of the vehicles. In addition, the treasurer stated these vehicles were leased and registered in the name of the Candidate. Since MFC did not provide mileage logs to substantiate the use of either vehicle or other records to indicate that the expenses resulted from campaign or officeholder activities, the Audit staff maintains that the portion of the lease payments paid by MFC totaling \$7,444 are personal expenses of the Candidate. Therefore, expenses totaling \$9,812 (\$7,444 + \$2,368) were associated with the vehicles located in the Candidate's congressional district and considered personal expenses of the Candidate.

In summary, the Audit staff concludes that MFC funds were used to pay a total of \$16,958 (\$6,230 + \$7,444 + \$2,368 + \$916) in personal expenses of the Candidate.

## **Finding 9. Failure to File Form 3Z-1**

### **Summary**

MFC did not file a Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with either its 2003 July Quarterly Report or 2003 Year End Report. In response to the interim audit report recommendation, MFC indicated that the non-filing may have been due to their assumption that filing software would generate the form automatically. MFC also filed amended reports to include Form 3Z-1.

### **Legal Standard**

**Special Reporting Requirements.** Principal campaign committees of candidates for the U.S. House and the U.S. Senate must file FEC Form 3Z-1 as part of their July Quarterly and Year-End Reports in the year preceding the year in which the general election for the office sought is held. The information in this form allows opposing candidates to compute their "gross receipts advantage" used to determine whether a candidate is entitled to an increased contribution limit. The following information is to be disclosed:

1. Gross receipts to date for the primary and general elections,
2. Aggregate amount of contributions from personal funds of the candidate for the primary and general elections, and,
3. A calculation of gross receipts less the candidate's personal contributions for each election. 11 CFR §104.19.<sup>5</sup>

### **Facts and Analysis**

The Audit staff reviewed all filings by MFC and noted that it did not provide a Form 3Z-1 with its 2003 July 15<sup>th</sup> Quarterly Report and with its 2003 Year-End Report.

<sup>5</sup> This regulation became effective January 27, 2003; as such, this election cycle was the first that required filing of this form.

Using the electronic data provided by MFC, the Audit staff determined gross receipts for the primary of \$115,700, and for the general of \$6,000, that should have been disclosed on the Form and included with its 2003 July 15<sup>th</sup> Quarterly report. There were no personal contributions by the Candidate.

For the 2003 Year-End Report, the Form 3Z-1 should have disclosed gross receipts for the primary of \$319,058 and for the general of \$14,500. Again, there were no personal contributions by the Candidate.

The Audit staff discussed this matter with the MFC at the exit conference. The treasurer stated that amendments would be filed to include Form 3Z-1.

**Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that MFC demonstrate that Form 3Z-1 was filed correctly or provide any comments it may have relative to this matter. In response, MFC indicated the non-filing may have been due to their assumption that their filing software would generate the form automatically. MFC also filed amended reports to include Form 3Z-1.

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